



# **Missouri Department of Natural Resources**

## **Clean Water Commission Water Protection Program**

### **Meeting Minutes**

**December 11, 2003**

**MISSOURI CLEAN WATER COMMISSION MEETING**  
**December 11, 2003**  
**Elm Street Conference Center – Roaring River Conference Room**  
**1738 E. Elm Street**  
**Jefferson City, Missouri**

**MINUTES**

Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission  
Davis D. Minton, Vice-Chairman, Missouri Clean Water Commission  
William A. Easley, Jr., Commissioner, Missouri Clean Water Commission  
Paul E. Hauser, Commissioner, Missouri Clean Water Commission

Ernest B. Artbaga, New Melle, Missouri  
Stacia Bax, Department of Natural Resources, Jefferson City, Missouri  
Dorris Bender, Water Pollution Control Dept., Independence, Missouri  
Joe Blumberg, St. Joseph News-Press, St. Joseph, Missouri  
Gerry Boehm, Greenway Network, Inc., St. Charles, Missouri  
Sherry L. Boldt, BP America, Inc., Jefferson City, Missouri  
Michael Bollinger, Ameren, St. Louis, Missouri  
Robert J. Brundage, Jefferson City, Missouri  
Gary Case, Putnam Pet., Dawn, Missouri  
Randy Clarkson, Bartlett & West, Jefferson City, Missouri  
Andrew Clementz, St. Joseph, Missouri  
Ann Crawford, Department of Natural Resources, Jefferson City, Missouri  
Irene Crawford, Department of Natural Resources, Macon, Missouri  
Cheryl Crisler, Environmental Protection Agency, Kansas City, Kansas  
Glen Davidson, Allgeier, Martin and Associates, Inc., Joplin, Missouri  
Cindy DiStefano, Department of Conservation, Columbia, Missouri  
Joe Dom, Department of Natural Resources, Jefferson City, Missouri  
Tom Engle, Duckett Creek Sanitary District, St. Charles, Missouri  
Laurie Farmer, SCI Engineering, Arnold, Missouri  
Terri Folsom, Sierra Club, Columbia, Missouri  
Forrest Garr, Chillicothe, Missouri  
Ray Grossmann, Greenway, Lake St. Louis, Missouri  
Dean Harrison, Greenway Network, St. Charles, Missouri  
David A. Henry, Wentzville, Missouri  
Leslie Holloway, Missouri Farm Bureau, Jefferson City, Missouri  
Tom Jones, Urban Area Coalition, Jefferson City, Missouri  
Terry Kehr, Wentzville, Missouri  
Malinda King, Department of Natural Resources, Jefferson City, Missouri  
Carla Klein, Sierra Club, Columbia, Missouri  
Chris Koenig, Dawn, Missouri

Mary Lappin, Kansas City Water Services, Kansas City, Missouri  
Richard J. Laux, Department of Natural Resources, Jefferson City, Missouri  
Barbara Li, Department of Natural Resources, Jefferson City, Missouri  
John Lodderhose, MSD, St. Louis, Missouri  
Jim Lunan, Holcim, Bloomsdale, Missouri  
James Mellem, Kansas City Water Services, Kansas City, Missouri  
Tom Moran, Sierra Club, Columbia, Missouri  
Kenneth C. Morgan, O'Fallon, Missouri  
Susan Myers, MSD, St. Louis, Missouri  
Michael F. O'Connell, Wentzville School District, St. Charles, Missouri  
David Overhoff, Department of Natural Resources, Jefferson City, Missouri  
James Peterson, M.D., Wentzville, Missouri  
Caitlyn Peel, HBA, St. Louis, Missouri  
Frank Pogge, Kansas City Water Services, Kansas City, Missouri  
Mitch Putnam, Putnam Landfarms, Chillicothe, Missouri  
Bernie Rains, Greenway Network, Wentzville, Missouri  
John D. Reece, Little Blue Valley Sewer District, Independence, Missouri  
Eric Seaman, VAC, Jefferson City, Missouri  
Becky Shannon, Department of Natural Resources, Jefferson City, Missouri  
Byron Shaw, Department of Natural Resources, Jefferson City, Missouri  
David Shorr, Lathrop & Gage, Jefferson City, Missouri  
Danielle Smith, AECI, Springfield, Missouri  
Kenneth L. Smith, Branson West, Missouri  
Royan Teter, Environmental Protection Agency, Kansas City, Kansas  
Steve Townley, EIARA, Jefferson City, Missouri  
Erin Volker, Chillicothe, Missouri  
John Volker, Chillicothe, Missouri  
Mary West, Moberly, Missouri  
Bob R. Wheelbargar, Dawn, Missouri  
J. Bruce Woody, St. Joseph, Missouri

Chairman Herrmann called the meeting to order at approximately 1:40 p.m. and introduced Commissioners Minton, Easley, and Hauser. Commissioners Perry, Greene and Kelly were absent. Chairman Herrmann explained that Commissioner Perry and Commissioner Kelly were not present because they were attending the St. Johns Bayou hearing and that due to its importance to this Commission that representatives be in attendance at this hearing and report back. Chairman Herrmann then introduced Director of Staff Jim Hull; Acting Secretary Malinda King, and Assistant Attorney General Amy Randles.

Chairman Herrmann then announced that the Commission was going to deviate slightly from the agenda and would give further explanation to this in a moment.

## **Administrative Matters**

### **Adoption of October 22, 2003, Commission Meeting Minutes**

Commissioner Hauser moved to **approve the October 22, 2003 meeting minutes submitted by staff**; seconded by Commissioner Minton and passed by Commissioners Hauser, Minton, and Herrmann, with Commissioner Easley abstaining.

Commissioner Herrmann announced that on the advice of counsel and staff, the commission would go into closed session for about a half-hour. Then the open session agenda would begin with the Putnam Landfarm item because of considerable interest.

### **Closed Session**

Commissioner Hauser moved that the Clean Water Commission **go into closed session** to discuss legal, confidential, and privileged matters under section 610.021 section 1, personnel actions under section 610.021 (3) personnel records or applications under 610.021 (13) for records under section 610.021 (14) which are otherwise protected from disclosure by law. The motion was seconded by Commissioner Minton and unanimously passed.

Commissioner Hauser moved **to reconvene the open session**. The motion was seconded by Commissioner Minton and unanimously passed.

### **Findings of Site Soil Survey at Putnam Landfarm**

Commissioner Herrmann announced the first item of discussion would be Findings of Site Soil Survey at Putnam Landfarm with Phil Schroeder presenting. This is as a result of the request or order by the Commission at the last meeting that the items discussed by the public would become a subject of the Site Soil Survey.

Mr. Hull explained that the public had expressed concerns about this landfarm the last commission meeting. The Commission asked staff to look into the allegations and conduct some investigative work at one of the landfarm sites. He said that there are three Landfarm sites but only one will be discussed today. Mr. Hull stated that at the last commission meeting there was a comment that Mr. Putnam was being criminally investigated and he had indicated that yes, the department is conducting a criminal investigation regarding Mr. Putnam. Mr. Hull stated that he erred in saying that and wanted to set the record straight. What he should have said was that yes, there was an investigation that is ongoing. Mr. Schroeder will present the results of a recent site investigation that was performed at the Putnam II Landfarm Site.

Phil Schroeder, Permits Section Chief of the Water Pollution Control Program, said that he wanted to make clear what the purpose of this investigation was and what they were trying to discover in the investigation. The purpose was to do three things. One was to determine the status of the soil remediation. Basically, they took some samples of the soil within the landfarm and determined its current quality. There were two reasons to determine the quality. First, is it within the quality parameters that we have set forth for entry into landfarms; and secondly, is the quality such that it would be considered as clean fill material. In other words, has remediation process been completed and is there any need for further remediation in the landfarm itself. Secondly, in the process of sampling they tried to measure and estimate how much material was in the landfarm. There were some concerns with respect to how much material was placed within the landfarm and with respect to the permit limitations of the quantities allowed in landfarms. And thirdly, there was some concerns with respect to whether or not the materials were actually all contained within the landfarm.

Putnam Landfarm is located in northern Missouri, in Livingston County, a few miles south of Chillicothe off on a county road. The site is approximately 1.8 acres in size and is oblong in shape. In the slide shown, the darker outline around the colored areas shows the berm that surrounds the landfarm. The blue areas shown are where standing water exists. The middle blue area is what is called a sump or is a settling basin. The water is designed to drain toward a sump or to a water body where it can be either discharged if it meets the standards and limits of the permit, or it can be pumped back out onto the landfarm itself to help add moisture to the soil material to help the remediation process. The area in purple on the far right side of the slide showed an area that was discovered that did not contain much material at all. In fact, there was a lot of the clay material that would constitute the bottom of the cell or the liner exposed to the surface and there may be some residual amount of soils there but all in all that area didn't contain any material of any significance according to observations. The slide also shows a darker area where soil material was bermed up. It was pushed up along the south side of the cell and created a berm all the way across one side. The grayed bar along the bottom indicates the approximate location of the county road that lies near the site. Mr. Schroeder also indicated the areas where the residents live. One slide showed that in one landfarm itself there were some striations along the length of the landfarm which were the tracks of the ripper that was used to aerate the soil to help the remediation process. Another slide showed some standing water. This is not part of the design-settling basin; this is just some standing water that drained in that direction from some previous rainfall events. Normally, water drains into the sump and all water would drain to one location. Mr. Schroeder noted the basin or the sump that was designed to take water drainage from the landfarm itself. The slide shows a portion of a corrugated pipe that would be the discharge pipe from that sump so that if water does accumulate to the extent that it reaches the lip of this pipe, instead of going over the top of the berm it will actually exit the pipe. Any discharges in that fashion has to meet the limits of the permit.

The investigation began by digging some test pits. Mr. Putnam volunteered to help and offered the use of his track hoe. Two staff from the Department of Natural Resources' Environmental Services Program, who are both well acquainted with investigative work, also assisted and actually took the samples. They do environmental cleanup projects and such, they were familiar with sampling techniques and how to go about properly making sure that all of the techniques used in the sampling followed all guidelines. Mr. Schroeder said he was there to make sure that the commission's wishes in terms of the investigation were fulfilled. Test pits were dug starting on the west side of the landfarm and others were randomly picked at some points all the way down through the soils. Test pits were dug all the way down so a visible difference in the soil type could be seen. A slide was shown on how the material turned noticeably lighter at the bottom of one test pit. Records were kept of where clay material was encountered at the bottom and of how deep the soil material was that was being remediated.

Mr. Schroeder then discussed how soil quantity in the landfarm was estimated. The quantity threshold for landfarms under the current permit is 2,500 cubic yards. Any material that goes into any permitted cell should be less than or equal to 2,500 cubic yards. Due to many of the cleanup projects actually involving more than 2,500 cubic yards, the department is now moving toward a 5,000 cubic yard threshold to avoid having a landfarm develop two cells to remediate a particular project. They just measured from the top of the exposed material down to the bottom or the top of the cell liner. Measurements were taken from test pits #1 through 23. One sample was taken in the bermed area, which was estimated at eight feet deep. The soil depths ranged anywhere between 1 to 22 inches in depth. In the area where there was basically no material, some residual was found mixed with what appears to be the clay liner.

Mr. Schroeder explained how the calculations for total amount were derived to come up with a cubic yardage figure of 1,138 cubic yards for an area that was anywhere between 1 inch to 22 inches in depth. The eight-foot berm was estimated at about 12,800 square feet. When these two figures are added, the total soil within the landfarm was estimated at about 3,000 cubic yards.

Mr. Schroeder then discussed the status of the soil remediation process. They were looking for two things to determine if the soil within the landfarm was acceptable for use in a landfarm and whether or not it met clean fill standards. The soil samples were analyzed for Total Petroleum Hydrocarbons (TPH), and then BETX. The criteria for accepting material within a landfarm is that it must have 2,500 parts per million TPH or less.

The criteria for removing the soils or determining that it is actually clean fill material that could be removed from the landfarm and used for some beneficial use outside the landfarm was that it has to meet Hazardous Waste Programs clean fill requirements. To be determined clean fill, it has to be less than 50 parts per million of TPH, one part per million of BETX, 0.5 parts per million of Benzene, and 60 parts per million of ethyl

tertiary butyl ether. The results showed that there is no detectable amounts of TPH at greater than 10,000 parts per billion, which is a 10 part per million threshold that we set as a standard, except sample 17 where the TPH was recorded at 41,900 parts per billion or 41.9 parts per million. Sample four detected amounts of BETX at the cell where ethylbenzene was recorded at 10.1 part per billion or 0.01 parts per million. The threshold is 0.5 parts per million so the material is meeting clean fill requirements. These are the two samples that we took that indicated any detection of the constituents that would dictate whether or not it is clean fill. There were three samples provided by Mr. Putnam. Two indicated that there was no detectable amounts of any of the petroleum constituents above clean fill requirements; but one detected TPH.

There were a couple of areas where some of the material that was actually pushed from outside the cell along the berm, which would be probably equal to two or three cubic yards of material. Based on this investigation, Mr. Schroeder said they are prepared to make some recommendations to Mr. Putnam about how he is operating his landfarm. One is, he needs to route all the standing water to the sump so that he can make sure all of his landfarm surface area is usable for remediation purposes. He should ensure that all soils are contained within the landfarm cell and spread evenly throughout the landfarm to facilitate continued remediation of all soils until he meets clean fill standards. We also recommend that he continue to do his sampling on a frequency of at least every six months to determine the process and progress of his soil remediation project. Mr. Schroeder concluded his presentation and said there are a lot of conclusions that can be drawn from this data but stated he would leave that up to the commission to let their feelings be known and what other further direction they want to give in terms of further investigation.

Commissioner Minton asked if the soil that fell on the outside of the berm that was deposited as result of the pushing was from one of the sites or from an area that had been designated that it would have fallen under the clean fill. He asked if it would have been allowable to be used for clean fill.

Mr. Schroeder replied that the sample was probably taken within 10 feet of that spot. That particular sample showed that it met clean fill standards.

Commissioner Herrmann said there are 10 requests to speak to the commission. Commissioner Herrmann requested the speakers limit their remarks as much as possible and consolidate duplicate remarks into one presentation.

Mr. David Shorr was called first to speak before the commission; however, since he represents Putnam Landfarms, he requested to allow Mr. Putnam to speak first then he would follow.

Mr. Mitchell Putnam from Dawn, Missouri, thanked Mr. Hull for the comment about not being under any criminal investigation. To address Mr. Schroeder's report, Mr. Putnam stated that when soil is brought to the landfarm the tonnage is all documented, every bit of it. Carol Eighmy with the Petroleum Fund can verify that is how they pay. From the closure logs it's what is in the pit. There is 400 yards from Trenton Co-op, which has been piled up along the side, some of which has run over but sampling results show that it's clean. The department has provided a letter stating that no further action is needed on that site. Mr. Putnam stated that the rest of the soil in the pit, 1,384 yards, comes from his store. Mr. Putnam offered to show the commission, or a representative, all the reports at his office and every bit of tonnage and every sample of everything that was brought into this landfarm. Mr. Putnam had also informed Mr. Schroeder, Mr. Hull and Mr. Bryan Fawks before the last inspection that he had agreed to close this landfarm out last summer when the neighbors had a meeting. He stated he has been trying to scrape the bottom of the pit to make sure there are no indications of anything left in the pit that would be dirty. He stated he has made a practice of trying to break the stuff down to non-detect. There are some samples that still have detection. He stated one was 41 and would like to see that down to about 10 before he moves it out. He stated that is why that soil hasn't been taken out and totally removed yet. Mr. Ed Galbraith suggested last summer that the heights of the berm be raised to satisfy the neighbors. Mr. Putnam said that even though a laser level shows that the berms were the correct height, he spent \$5,000 on a bulldozer to raise them. After being reported the following week he spent another \$5,000 seeding, mulching, and trying to get grass to grow. Now, of course, he doesn't have clay berms, according to the complaints, and the berms still aren't right. He stated he has tried to make people happy but no matter what it doesn't make anyone happy. Mr. Putnam closed by saying Mr. Schroeder's measurements and amount of soil was off 200 yards but that is pretty close and if there is any soil in the pit that came out of it or is laying around, it's all clean and he could take everything out of there now and seed it and mulch it and be done with it.

Mr. Putnam then gave a brief history of how he first built his landfarm. He felt that this information would answer a whole lot of questions to neighbors and to everyone. The first sheet in the handout says "pertaining to the permits in the clay liner." Before building a landfarm, he talked with Mr. Mark Lennox of DNR's technical assistance program who sent Mr. Putnam a list of things that he needed to do then visited the site and helped with the design of the pits. Mr. Putnam stated he had been accused several times of being a crook and would falsify his samples. The chain of custody is a legal document used in the environmental business. Mr. Putnam noted that Mark Lennox signed that document. He stated that he ran the track hoe that day and Mr. Lennox pulled the samples for DNR. He explained how he decided to use a clay liner instead of plastic liner. He stated a letter requesting approval was sent to DNR on April 19, 2000, requesting a waiver. Verbal approval was received from Jack Pate, Permits Section, and was told that he could start the work. A hydraulic conductivity test was completed and approved. Mr. Putnam felt that the pits were built to meet all general permits. The next document in the handout shows according to records, that DNR has been to the farm over 39 times. He stated that DNR, Northeast Regional Office staff and Department of

Conservation have driven by and watched several other times. He felt that he has been cooperative and even used his own equipment to help with pulling samples. Mr. Putnam named three DNR staff, Irene Crawford, Brenda Bethel, and Fred Hudson, that he felt has expedited a lot of complaints on things that could have been settled quite some time ago. In his opinion, he felt they had been very unprofessional. Mr. Putnam's third party consultant has pulled samples at the farm trying to help with these problems. He was told several times that it seemed like the DNR was on a witch hunt. Mr. Hutson had shut the landfarms down for six months for soil being piled up on plastic and covered with plastic waiting to be remediated. After a meeting, it was discovered that the DNR workplan and the permit instructed the handling of the soil in this way. Mr. Putnam stated that closing for the six-month period cost the loss of three jobs, which estimated gross sales were over a half million dollars. He stated that his geologist and third party consultants who write the remediations are charging more because the DNR makes their jobs twice as hard because of extra questions and meetings. Just two or three weeks ago after you guys asked for some stuff to be done Irene called me and said and I quote, I wrote the conversation down, I was on my cell phone outside when she called me and she had my number so I went inside my office and I got ready and I recorded it to myself so I could make sure I could repeat everything, "Mitch where are you?"(Irene) "I'm in my office."(Mitch) "I had heard you left the state and abandoned your farm."(Irene) "Well I'm right here."(Mitch) She explained she wanted my phone numbers to give to Kevin Mohammadi who was coming to pull more samples. I said fine but when is this going to stop? She said look, I don't like you, I don't like Mr. Koenig, I never believed you when you said you had personal issues with him, but I do believe you now. He is nuts and I need this problem to go away. Then she asked me about the letter that's sent to the commission end of conversation. This is user friendly DNR. This is what my customers and myself have been going through for quite sometime. Mr. Putnam said he was told by Mr. Lennox that his superiors informed him that he could no longer talk to Mr. Putnam. When asked why, Mr. Lennox replied that he believed they were out to get him. Mr. Lennox left the department shortly after. According to Mr. Putnam, Mr. Hutson had told the St. Joe news press that out of 80 landfarms his was the only one with contamination outside the cell. Mr. Putnam stated he could see why neighbors would be upset but the sample he was referring to was 15 parts per million. His permit says if its 50 parts per million he can throw it anywhere he wants. He felt he was made to look like a criminal but they neglected to tell the paper that those samples were legal. He stated that Brenda Bethel told the newspaper that contaminated water was pumped into a public stream. Basically the water went from pit to pit and never left the farm. Only 30 gallons of water came out of a pump hose. He reported that the tested water came back clean. When he asked Ms. Crawford to remove the Notice of Violation (NOV) from his record, he was told that she had spent way too much time with this project and was not spending any more time with it. Mr. Putnam felt that the NOV was given illegally. He felt that if he was a criminal, as Mr. Koenig says, he would have a major violation. He stated that when he sent a letter to the Northeast Regional office, under the Sunshine Law Act, to review the reports in his file, he was denied the request due to the file being too big and staff couldn't get it together. After contacting David Shorr, he was allowed to review and get copies of documents (included in what was given the commission). The next issue

Mr. Putnam talked about was the clay liner issue. He stated again that DNR told him how to construct the landfarms. DNR recommended a clay liner. He had asked DNR to conduct a multimedia investigation. In their report, they say they initiated it but they didn't. He stated that Sam Wilson told him, while in negotiations, he would have a chance to correct problems, if there were any. But when they showed up Brenda Bethel got in his face and said he didn't have a plastic liner and was going to shut him down. He felt that 99% of DNR people that he has worked with was very professional and very good people and are trying to do a good job but with some there are personal issues. Mr. Putnam restated that the water never left the landfarm, the berm was high enough when they said it wasn't, no contaminated water went in a creek and the report was not distributed to the neighbors as he was told. Mr. Ed Galbraith, Mr. Schroeder, Brenda Bethel and Mr. Quinn, the state representative, attended a neighborhood meeting that Mr. Putnam had no knowledge of. At the meeting it was stated that Mr. Putnam pulled all his own samples, which his permit says he can, but neglected to mention that DNR pulled over 20 soil samples and 8-10 water samples. All were clean. Mr. Koenig was at the meeting and had a copy of the report and was very aware of that. Brenda Bethel never mentioned that DNR has pulled water samples and found nothing. Mr. Putnam asked how there could be peace on anything if everyone is kept in the dark and how can the neighbors understand that DNR has done their job. Mr. Putnam stated that in his opinion, Mr. Koenig has made many false accusations, stirred up many other people and has used a government agency to attack and hurt his business, his family and his personal life. He stated that the history with Mr. Koenig began with a fist fight years ago.

Commissioner Herrmann stated that the reason for the department's presentation to the commission was to address the neighbors who are concerned and educate them.

Mr. Putnam mentioned that he had read something about the neighbors daughter couldn't sleep at night and cries because of the odors. He presented copies of letters from neighbors stating that there is no smell coming from Putnams Landfarm. He said this landfarm sets across the road approximately 300 feet from his door. He felt that if anything would get in a pond it would go to Mr. Cases' pond, not Mr. Koenig's because of the way the land lays. Another neighbor, Mr. Ireland, who lives in an underground home, signed a note saying that he has never had any odors in his home. Mr. Putnam continued with the other complaint that supposedly he had moved and fled the country. He moved his family to South Carolina. He stated his wife had been run off the road causing her to wreck as well as having two of his trucks run off the road. He still owns the farm, along with four companies in Chillicothe, Missouri. Enough is enough; he doesn't want to see anyone get hurt over this thing. He stated he has had nails thrown in my driveway, windows broken out, tires slashed, and vehicles vandalized. He stated he has pulled several tanks and had DNR following with no problems. He tried to conduct business in a fair and honorable method. He restated that DNR has records of every ton brought to the landfarm. They have over 5,000 samples and if you look back on the records, none say that there was too much soil. Mr. Putnam mentioned that this is the first time he has spoken in the public limelight. He then asked Mr. Case and Mr. Wheelbarger, who volunteered their time to come and talk about the odors or whatever.

Mr. Gary Case, neighbor, stated he has had DNR take water samples and soil samples at his house and where ever the water would drain; everything had come back negative. There was nothing that washed down to his pond. He stated he has worked in the construction industry for 16 years and was foreman for a company in Santa Barbara, California, for three years for an environmental subcontractor. He stated he did some research and with DNR's help, found that everything was in line according to the Missouri State Guidelines. Mr. Putnam had assured him that he would continually monitor as he was developing and has done so. He stated he has seen no problems.

Mr. Putnam stated that he is done landfarming in this area and is trying to close out the pits. Now a petition is being circulated that he can't sell his house for 5 years. He stated that he has asked DNR to help shut the landfarm down and do it properly. Mr. Schroeder has been very helpful.

Commissioner Herrmann then asked Mr. Shorr if he wanted to add anything.

Mr. David Shorr with the law firm of Lathrop & Gage, said he currently represents Putnam Petroleum and Mitch Putnam. Mr. Shorr thought Mr. Putnam had a story that needed hearing, especially after reading the minutes of the last meeting. He said the data presented by Mr. Schroeder doesn't demonstrate a problem. Mr. Shorr didn't feel that he has yet heard what would be considered a conclusion in the matter. He felt that a regulatory agency has an obligation to inform both sides what the results are, what they found, and what they have seen. The agency has visited the landfarm a known 39 times in 36 months. Mr. Shorr challenged that this is probably a record with the exception of Premium Standard Farms. He stated that the agency helped with the design and the state has demanded less costly tank clean ups through the PSTIF. The driver for landfarm technology in the industry is the lack of government funds. The bottom line is that presently in this state a landfarm is legal. It was Mr. Shorr's opinion that the agency has made this one untenable because it has failed to follow through with completeness. Mr. Shorr found it objective that Mr. Putnam has been accused and has to demonstrate his innocence, which is not the system. He said the concern is the department's complaint policy and asked the commission to assist the department with redrafting it. Mr. Shorr stated that the department policy is they get a complaint and do a site visit. He said the question becomes how many clean samples are needed. He felt it was a legitimate question and policy question well within the purview of this commission and other commissions to have as the discussion with regard to complaint policy. He asked that the commission at least consider that option as a direct result to Mr. Putnam's experience. Mr. Shorr stated that Mr. Putnam has been compliant throughout this operation as a direct result of the inability to state what his status is. Mr. Shorr believed that Mr. Putnam has been improperly accused. Mr. Shorr encouraged the commission to address the issue of how the department is going to handle complaints, especially in light of what the financial position is of the agency right now. Mr. Shorr said his review of the data indicated that there was appropriate tonnage within this facility as going through a rotation.

Commissioner Herrmann then recognized Tom Moran from the Sierra Club.

Mr. Tom Moran from the Sierra Club, Columbia, Missouri, said that regarding the landfarm concept, the system seems to be relatively inefficient and ineffective. It has a method of dealing with a widespread problem. There are more effective methods of dealing with TPHs or Total Petroleum Hydrocarbons in soil. Ideally there shouldn't be any discharge of TPHs into soil but practically other methods should be considered. That was actually advanced by people that know about what some of these other options are, like controlled incineration, which is low temperature incineration. Another big issue is offsite contamination and that's not always felt or seen, sensed or smelled. For example, benzene is the B in this BETX. It is well documented that it is a human carcinogen. Benzene will be one of the many constituents in the volatile gases released from these farms. Even at the levels generally recognized to be safe, and these levels are administratively defined and statistically derived numbers. Those levels may not be protective of human or environmental health. Only one molecule of benzene in the wrong place, like in a human body, at the wrong time is a potential cancer event. Contrary to earlier testimony this soil does contain toxic waste; it's just a matter of defining what that is. Its got 2,500 parts per million of it in it and that's a complex mixture of TPHs and heavy metals. Some of those will volatilize and just go off the site in the wind; some will accidentally escape like when their sump overflows or something of that nature. Some will be biodegraded. However, bioremediation is not as effective as simply making water and carbon dioxide from these complex molecules.

Commissioner Herrmann told Mr. Moran that his argumentation is with the technology not with the issue at hand. He suggested Mr. Moran present his ideas about the technology at another meeting when there was more time.

Mr. Moran stated he was trying to address some of the concerns by testimony from the Department of Natural Resources personnel earlier. He continued saying organisms that are in the soil vary greatly in their ability to degrade those organic compounds. Some actually biomodify these substances to more harmful forms. Mr. Moran stated that his copy of a general permit transmittal, which is basically his application for a general permit, had the initials RJC (presumably someone in the Department of Natural Resources) with a note that said 'please rush.'

Terri Folsom, Sierra Club, Columbia, Missouri, informed the commission that she has been to the Water Pollution Control Program and Hazardous Waste Program to do file searches relating to the Putnam Landfarm and other hazardous waste issues around landfarms. Ms. Folsom stated that according to a permit condition in the permit that was granted to Mr. Putnam, it said that a treatment cell should be lined with a resistant 12m plastic. In all of the files reviewed at the Department of Natural Resources, Ms. Folsom said nothing was available saying a variance was granted to this permit. She said in the permit that soil-sampling frequency should be 100 cubic yards and in a later letter from Mr. Putnam it was suggested that those sample frequency should be 500 cubic yards. She questioned if it was DNR policy for one person to grant verbal variances from the permit

conditions and if so felt that it undermines the permitting process. She noted that her understanding of a variance was that there had to be documentation that this was okayed either through the Clean Water Commission or by a court order. She pointed out that if permits are going to be granted variances then it needs to be documented and needs to be not just a verbal agreement given by a person. She felt that undermines the whole permit process, that also includes comments from stakeholders and people involved.

Mr. Hull said comments were heard about a permit requiring a synthetic liner versus a natural clay liner. This issue had been discussed with Chris Koenig in the field the day of the visit to the Putnam Landfarm site. Mr. Schroeder felt confident with his decision, and maybe it wasn't done exactly right, but the whole intent of the liner is to prevent contamination from leaving the cell and getting into the environment. Mr. Schroeder felt that after looking at the information that was contained in the soil permeability results, that it would be protective and he made that decision, he has been open with that. He has also been open with his decision of if he had to do it over again he wouldn't have done it. He said it doesn't change the fact that it's done. In Mr. Hull's opinion, he didn't believe that there had been any damage occur because of that decision other than credibility. Trust in a big deal with the department, and things like that tend to undermine that. He said they couldn't go back and fix something that's already done. Mr. Hull said there have been stakeholder discussions to discuss the use of a natural liner versus a synthetic liner. He said history can't be changed but they have been open that they made that decision. He said that maybe it shouldn't have been done in the manner that it was but just wanted to let all know.

Commissioner Herrmann said he takes exception to the statement that a mistake was made. It was still meeting the criteria of the regulations. It has a permeability coefficient of 10 to the minus 7, if the clay liner still has that, then he found no difficulty with Mr. Schroeder's approval. Commissioner Herrmann said that this information should have been written someplace in the record though.

Mr. Hull said Commissioner Herrmann was correct in the intent of the requirements of the law and regulations. He was referring to a condition of the permit.

Bob Wheelbarger, neighbor west of Mr. Putnam's ground, stated he had been working on the fencing and been by the place several times without ever smelling anything. There was never any type of fuel smell even within 10 feet of the berm on the north side.

Mr. Chris Koenig from Dawn, Missouri, said he was overlapping on what Terri Folsom said on the plastic liner. Mr. Schroeder, in a couple of newspaper articles and a shareholder meeting, admitted he violated the public interest by allowing landfarms. He felt that if the rules and regulations are printed they should be followed. If a plastic liner was required, he should have had one. Mr. Koenig felt that the rules and regulations are there and should be followed by everybody.

Commissioner Herrmann commented that regulations allow that either are correct.

Mr. Koenig responded that no, the old permit calls for plastic liner.

Commissioner Herrmann replied that that's the permit, he was talking about the regulations. The permit only stipulates the liner. The regulations say you may use either.

Mr. Koenig stated that he has never seen a regulation and he only had seen the permit. Mr. Koenig commented that the public only sees the permit. The plastic liner should have been there, he thought that it would have been required. As Mr. Schroeder showed, Mr. Putnam is already over on the 2,500. He felt Mr. Schroeder should have done testing on the outside soil. If there was no plastic liner and the clay liner may or may not work but thought that some of this would mitigate outside these landfarms like in the past investigations.

Joe Blumberg, reporter with the St. Joseph New Press, had questions about the clay liners. Mr. Blumberg said to his knowledge, the regulations do not allow either clay or plastic liners. In conversations with Mr. Schroeder, he understood that clay liners are not allowed now and the permit, the general permit, is being revised to be possibly either/or but as of now he understood that they are not. He asked if his understanding was correct.

Commissioner Herrmann said it was incorrect from his understanding. It's the same as the lagoon regulations which require a clay liner of 10 to the minus 7 permeability coefficient.

Mr. Hull said he would let Mr. Schroeder talk as to the permeability requirement. But, the general permit currently requires the plastic liner. The new draft general permit currently states either/or.

Mr. Schroeder said with respect to rules and with respect to permit requirements, there is a difference. The rules are silent with respect to what type of treatment system or what type of design is necessary to be protective of waters in a state or in a landfarm type situation. Those designs were developed through the Hazardous Waste Program and in fact they took the lead in developing designs that would be protective of waters of the state. It was determined that those designs would in fact be protective. The design criteria used was those for sewage lagoons where it says 10 to the minus 7<sup>th</sup> centimeters per second, so it was thought that those were protective criteria for the use of the landfarms. So, criteria in the Chapter 8 design guide for domestic type sewage lagoons was applied to a landfarming situation.

In answer to Mr. Blumberg's question, Mr. Schroeder replied that the general permit currently does not allow clay liners.

Mr. Blumberg then asked for clarification that if any general permit, not just this specific permit, but the general permit as written, does not allow clay liners.

Commissioner Herrmann stated that it didn't say it didn't allow for clay liners; it said it calls for the plastic liner.

Mr. Schroeder stated that was correct.

Another Commissioner – Does it require a plastic liner?

Mr. Schroeder stated that it requires a protective liner and it specifies the use of the synthetic liner of 12m plastic or greater.

Mr. Blumberg said that just to be clear, the general permits currently, until or if the new general permit is adopted, requires use of a plastic liner. For every general permit for every landfarm in the state currently a plastic liner is used.

Mr. Schroeder stated that was correct.

Mr. Blumberg asked if the commission had any comments and if they would like to address the issue of the plastic liner requirement in the permit being waved.

Commissioner Herrmann suggested that he could talk to Mr. Blumberg after the meeting. Commissioner Herrmann said that it's a matter of protection of the waters of the state and if protection is provided that's the interest of this commission and the department.

Mr. Blumberg said he would like to talk about the new general permit that is possibly going to be written that says either compacted clay or a synthetic plastic liner would be required. In relation to Mr. Putnam's landfarms, the clay that he is using as a liner is what naturally occurs in the ground. There is no difference in that clay from any clay in the State of Missouri. He has submitted permeability tests and it does fall below what the guidelines are but it is not physically compacted. He then asked if by those standards, would this clay fall outside those guidelines.

Commissioner Herrmann stated this has only been talked about generally.

Amy Randles, Assistant Attorney General for the Clean Water Commission, stated that the commission has open sessions for anyone to come and address the commission but the commission can only give directive to the department. The department is who carries out the work day to day and makes judgement calls. She didn't think it was the commission's intent to use general public forums or agenda items to have people come up and put them on the spot and have them make legal calls about what they think, whether they think a violation occurred, whether something should be done, etc.

Commissioner Herrmann stated that he and Mr. Hull have talked about the requirements in general terms. On the lagoon requirements, the assessment from the geological group within DNR before construction can start should be incorporated into these type permits.

The geological assessment would determine if the available type of clay can be utilized as a liner onsite or if a plastic liner should be used and haul in clay.

Joe Blumberg said that in regard to the information printed in the newspaper, he gathered some of the information on Mr. Putnam's operations. It was difficult to determine the exact total number of gas stations that he has landfarmed. But, of the five gas stations found where landfarming has been done, about 29,000 tons of dirt had been brought in, which is approximately 15,000 cubic yards. That is over double the capacity of this three landfarm cells, if the maximum is 2,500 cubic yards each. That would leave approximately 12,000 cubic yards in his possession that he does not have permission to get rid of at this point. His permits say that he can only have a total of 7,500 cubic yards, so he is apparently well beyond which leads to some concerns about the amount of dirt that are in the landfarm cells themselves. In the results Mr. Schroeder presented from his visit show he had over 3,000 cubic yards in that cell; the permit allows 2,500. Mr. Blumberg questioned why all of the cells weren't measured, especially if Mr. Putnam is considering closing them down. He felt that the two real feasible options for that contaminated dirt are either to go to a landfill or go to a landfarm. Incineration would be too costly. When dirt is taken to the landfill, the ground and the water and the air are all protected. But when it's taken to a landfarm, it is not protected by those same measures because the clay is just naturally existing under the soil. When it rains it could go anywhere.

Commissioner Herrmann then said he would have time to speak with Mr. Blumberg after the meeting.

Ms. Erin Volker, along with Mr. John Volker, neighbors, stated their concern is not just with Mr. Putnam, but with the whole DNR circle they have been running in for three years. She suggested that if regulations are going to change, they should be made easier for the citizens who have concerns to address. She stated that Mr. Putnam only circulates the soil instead of tilling it over as required. The soil was only tilled while he was under investigation by DNR. It is not aerated as is required by the remediation process. She felt that staff of the DNR office in Macon have really given them a run around. She felt that the contaminated soil gets blown around the land and in the air, which is not good for our land or for our children. She stated she only smells the fumes once in a while.

Mr. Volker made a general comment that blasting has been done at another site that hasn't been discussed. He wondered how the integrity of that cell can be maintained if there is blasting. He felt that the issue of benzene is not being addressed.

Ms. Volker asked if any of the berms have been tested since the contaminated soil from the cell was used to form them. On June 28, 2002, the berms were reinforced with remediated soil. Ms. Volker said Mr. Putnam knew that concrete was mixed in the soil, not rock, along with portions of plastic and other trash. She asked if that would then constitute hazardous waste that should be in a landfill instead of put on a landfarm.

Mr. Volker mentioned that much of the soil was brought from a site that had been a filling station for decades; hence a lot of lead. He didn't understand why soil was removed if it was just going to be replaced with another filling station.

Ms. Volker stated that this happened on two different sites.

Commissioner Herrmann stated that the commission will be working with the department in the coming months on a revision to the general permit. Many of the comments that have been made will be considered in trying to refine the permit conditions and the implementation of construction methods in those permitted facilities.

Commissioner Minton commented he is confident that if in the future if there was a violation on this site or at any other sites, the department with due diligence will investigate those situations. He stated he not known the commission to be derelict in their responsibility and response to the public. The concerns of the public are also the commission's concerns and felt that as an agency the matter would be pursued in the manner in which it deserves attention.

Mr. Hull added that they will be working through finalization of the general permit and make sure that the commission is aware of recommendations and has a chance to review them before it is available to the public. He commented that landfarms can be protective of public health and the environment but if they are not constructed and operated correctly they can be a problem. There is confidence that a clay liner is protective in these facilities, therefore, that change is being considered in the new permit conditions for these types of cells. Mr. Hull stated he really had empathy for both the concerned citizens and the operators of these facilities. If there were 39 visits to the facility, he would like to say that there is not a problem. He thought an answer was deserved. Mr. Hull felt that the results of samples were within the limits that the permit required. He would like to reach a conclusion on this matter one way or the other.

Commissioner Herrmann asked if the revised general permit would be public noticed before it would be implemented.

Mr. Hull said it was just on public notice and the comment period has ended.

Mr. Hull stated that comments have been received but the document has not yet been finalized. They worked with the stakeholder group and looked at all the comments and are now at the point of finalizing the permit.

Commissioner Herrmann asked if the document would be brought to the commission before it is finalized.

Mr. Hull replied that it would. Mr. Hull felt it a good idea since the commission has heard a lot of the concerns and it could help with these issues. The goal is for all to feel comfortable that general permits for landfarms are protective of the public health and environment and are still an effective method of treating contaminated soil from these sites.

### **Stream Classification Evaluation Procedures**

Commissioner Herrmann announced the next topic on the agenda is Stream Classification Evaluation Procedures.

John Ford of the Water Pollution Control Program's Monitoring and Assessment Unit, reported that at a recent commission meeting, the commission asked staff to look at developing some stream classification guidelines. A small group of people from the Water Pollution Control Program and two aquatic biologists from the department's Environmental Services Program was formed. A set of criteria was developed then sent to a group of stakeholders for initial comments. Some changes were incorporated. The list of stakeholders, their comments and the program's responses were included in the commission's packet. There are a couple of issues that are still open and unresolved. Mr. Ford stated that there is a recommendation to send it out on public notice for comments. Mr. Ford stated that in the interest of time he wouldn't go through the document but would answer any questions.

Commissioner Herrmann felt the information that was provided answered his questions.

Commissioner Minton commented that feedback from the public at large was very beneficial to a commissioner to assist in understanding the concerns. He requested Mr. Ford to explain the process and the course of action that the department will pursue in the upcoming months.

Mr. Ford replied that if it goes on public notice it will be brought back to the commission for approval. Then at the first opportunity (the correct dry period conditions), petitioners would do the fieldwork on selected streams. For other water bodies, lakes or wetlands, where the dry period requirement doesn't count, those can be done at any time. The information collected would be reviewed by an interagency group, consisting of DNR and Department of Conservation staff and maybe some others, and a decision would be made. Because it would also cause a change in the water quality standards, the U.S. EPA would also do a review. That decision would then go before the commission in open session. With all in agreement, it would then be a rule change in the water quality standards.

Commissioner Minton asked if the list itself be promulgated by rule or if after a consensus of the classification of the individual streams are they just simply public noticed.

Mr. Ford replied that once a decision is made that new streams or lakes should be classified then the next revision of the water quality standards would include those changes.

In answer to Commissioner Herrmann's question, Mr. Ford replied that it would be part of the regular water quality standards review process.

Commissioner Minton noted that in some of the more recent commission meetings, individuals have requested the commission to classify a particular stream. At more than one meeting it ended in a debate. He asked if by doing this in a procedural method would it eliminate the need for the commission to address one stream at a time.

Mr. Ford replied that it should.

In answer to Commissioner Minton's question, Mr. Ford's opinion was that this is a reasonable and prudent method to pursue. This method would give more consistency and more accuracy in what staff thinks the definitions in the standards are.

Commissioner Minton – I'm gonna have one of the common concerns in the matter and I probably should not lower myself to the level of the comment from Mr. Midkiff concerning the tainted motivation of this commission but if I didn't I wouldn't have respect for myself when I go home this evening. I resent it for the record. Thank you sir.

### **Whole Body Contact Recreation Use Designation**

Becky Shannon of the Water Pollution Control Program's Water Quality Section reported that, as requested by the commission, staff proceeded with finalizing the memorandum of understanding that was presented, to address the issue of Whole Body Contact Recreational use. Staff were also directed to work with stakeholders to try and resolve issues that were still outstanding. Ms. Shannon indicated this was an issue that EPA included in their letter to the department when they reviewed Missouri's water quality standards. EPA had requested the administrator find that the way the state deals with whole body contact recreation designation is inconsistent with the Clean Water Act. The department had been working to find a workable resolution to the concerns that were raised. After two separate meetings, (October 24 and November 4) with stakeholders, consensus was not achieved. One of the comments made prior to the last meeting was that Mr. Midkiff objected to anything other than immediately designate all waters as Whole Body Contact Recreational use.

In general, the attendees of the November 4 meeting were comfortable with the concept of prioritizing waters for designation and Whole Body Contact. Risk to the public health was discussed as being the primary consideration. That means any prioritization scheme should result in designating high-risk waters right away. High-risk waters were considered those in areas that have high population density, high recreational use and potentially streams where the flow is primarily effluent. There was a later comment

raised by a member of that group that only streams that have a significant amount of flow, perhaps class P streams, should be considered high priority waters. There was also concern raised by the attendees that there should be a window of opportunity for permitted facilities to develop a use attainability analysis and request that this designation be removed prior to them being required to install disinfection systems. A significant concern was that if the designation of Whole Body Contact was done right away that they would immediately be required to spend the money to disinfect their effluent, when, if given time, they might be able to demonstrate the particular use could not be attained.

Ms. Shannon noted that contact was made with some of the other stakeholders who weren't able to attend the November 4<sup>th</sup> meeting. One noted that while they recognized these issues and did not disagree with them, they thought that it was appropriate for the department to proceed with the work under that memorandum of understanding that had been discussed previously. In talking with Mr. Ted Heisel, who represents the Missouri Coalition for the Environment that filed suit against EPA regarding the states water quality standards, he wasn't comfortable in committing to any particular prioritization scheme or agreement regarding how the department was proceeding on Whole Body Contact Resolution. This is the reason primarily that consensus was not achieved. Ms. Shannon thought that consensus would not be achieved until the lawsuit was settled. Staff are proceeding with conducting an analysis of the high priority waters to determine what waters would be affected if indeed the department did go with this type of framework. Also, staff are looking at what facilities would be affected, if this prioritization scheme was pursued. Staff have insured that the draft stream classification guidance that was just presented would include the information for when someone requests a stream to be classified. It would also include the information necessary to develop a use attainability analysis, if appropriate. Ms. Shannon then asked if EPA had any comments to add.

Ms. Cheryl Crisler from EPA Region VII commented that what Ms. Shannon has identified in terms of moving forward with high priority waters is certainly an approach that EPA would incorporate into the negotiations that are about to begin with the plaintiffs. Ms. Crisler mentioned that EPA received correspondence from the state that they plan to move forward with rulemaking. Those will be incorporated in the negotiations. The one outstanding item is the issue of classified and unclassified waters.

In answer to Commissioner Minton's questions, Ms. Shannon replied that the Whole Body Contact is one of the 16 issues involved in the suit by the Coalition and all are issues pertaining to the water quality standards in the State of Missouri.

Commissioner Minton then asked about the status of the water quality standards in getting them ready for public comment.

Ms. Shannon replied that a list of different rule changes was presented at the July commission meeting and permission to proceed was requested. Those were the changes to the water quality standards. Whole Body Contact was not talked about at length. Of the seven items that EPA disapproved, one of them was no longer considered disapproved and the other six are addressed in the proposed rulemaking that is now being finalized. [Clarification by staff: There were eight disapproved items; seven were being addressed in the proposed rulemaking.]

Commissioner Minton asked what the 16 items are that are involved in the lawsuit.

Ms. Shannon replied that those just mentioned accounts for seven [Note: Actually eight] of those things contained in the lawsuit; there were two items that EPA said they asked for a finding of inconsistency. These are being addressed in the rule language that is being finalized. The Outstanding National Resource Waters is being addressed. So, at this point eight for nine are being addressed. The remaining items are items that EPA suggested or recommended the state consider during the next triennial review. Of the things that EPA raised, four of those are being addressed but those don't correspond exactly with what is in the lawsuit.

Commissioner Minton asked when the triennial review will be available for public review.

Ms. Shannon stated that the proposed rulemaking is being finalized right now. A few details need to be worked out. Details related to effluent limits *E. coli* versus fecal coliform are being finalized. It should be ready to move forward into the rulemaking process before the end of this year. Information to EPA states it is expected to be a proposed rule; so, it will be a proposed rule published in July of 2004.

Commissioner Minton asked why all of the concerns in the lawsuit would not have been addressed by July when the rule comes out.

Ms. Shannon replied that the Whole Body Contact issue is still one that is being discussed and no clear direction on how to proceed has been received. One of the issues in the lawsuit is the issue of wetlands that EPA has since said is no longer a disapproved item so it's not necessary to address that. One of the items has to do with implementation of the antidegradation policy, which is still being worked on. This item was not raised as a disapproved item or an inconsistency, and that's the case with all of the other items that were raised in the lawsuit. They were not disapproved, they were not inconsistencies, they were items that need to be looked at, which is being done.

In answer to Commissioner Minton's question, Ms. Shannon agreed that it would be six months to a year from now before the public would see at those remaining items that are part of the lawsuit to see what direction the agency is going.

Ms. Shannon stated she expected that another rule making would immediately follow this one. Another proposed rule could be in the development process during the public comment period of what is currently being worked on.

Commissioner Minton was concerned if enough was being done realizing that all items are not being addressed and that if this suit were to prevail in court that the federal agencies involved wouldn't be setting the rules for the state. In answer to Commission Minton's concern, Ms. Shannon didn't know if there was anything that could be done to get ahead of the lawsuit.

Ms. Randles asked if EPA had thoughts to share.

Ms. Crisler said that Ms. Shannon did outline all the items that are not being planned to be addressed by the state. That includes the wetlands issue, antidegradation and high-flow exemption. The Whole Body Contact, referred by EPA as the "101 A goals," are split between classified and unclassified waters because in the lawsuit it not only addressed the classified waters but also the unclassified waters so that has been expanded. In terms of negotiating with the plaintiffs, Ms. Crisler stated that it would probably be of use and a benefit to the state if there was some way to expand the current planned rulemaking to include the high-flow exemption and antidegradation. She indicated that it would be positive for the state to have a plan or proposal for how to promulgate those.

Commissioner Minton asked if that meant all with the exception of Whole Body Contact issue.

Ms. Crisler said it includes all that have not yet been designated by the state. She thought this would be a way to address all of the items in the complaint and maybe to get ahead to have some kind of a plan to deal with those water bodies and the designation for Whole Body Contact.

Commissioner Minton asked staff what the logistics and the difficulties of attempting to do this would be.

Ms. Shannon stated the antidegradation policy and implementation policy has not been to the public since 1994. She said it has implications that warrant some extensive public dialogue prior to taking any steps.

Commissioner Herrmann remembered very extensive dialogue the last time it was a topic of discussion.

Commissioner Minton asked if it would be prudent for the commission to give direction to the agency to proceed with the process and include it in the rule. He asked if there was a problem with going ahead with it.

Ms. Shannon stated that could be done with the high-flow exemption issue. EPA has suggested the state eliminate the high flow exemption. It would be easy to eliminate the language that allows the exemption currently. With the antidegradation provision, there are two different issues. Tier 3 antidegradation is already being addressed in the proposed rule, which has to do with Outstanding National Resource Waters. The other is tier two antidegradation dealing with those waters that are not pristine but need a higher lever of protection than some other waters do. No language is currently drafted for this.

Commissioner Minton asked if it would be reasonable to ask staff, with input from the other commissioners, to get together and strategize over the issue between now and the next commission meeting. He didn't know if this would be possible considering the manpower constraints and all other issues that the department is dealing with but felt it may assist the Environmental Protection Agency in their endeavors. The last thing he wants to happen is to have the courts decide the water quality standards for the State of Missouri, bottom line.

Commissioner Herrmann thought antidegradation could be handled as a subset to the total proposal so that it proceeds along the same line. Depending on how much conflict or consternation it generates it could be dropped and proceed with the rest if that seems to be prudent at the time.

Ms. Shannon stated than the primary issue remaining is that of Whole Body Contact and if all waters could be designated for Whole Body Contact it could be done right away. The language is already prepared.

Commissioner Minton said it should be addressed between now and the next commission meeting if unless the other commissioners think otherwise.

Commissioner Easley agreed. He thought there should be a schedule with the time frames. This would show on record that it has been or would be addressed.

Mr. Hull said knowing that EPA has got the lawsuit and knowing the proposed rule does not address all those issues is in the process, we felt the program should proceed with what is feasible to do. He said this needs to be evaluated and discussed internally. EPA needs guidance on what can be done and the feasibility of doing it in what time frame.

Commissioner Minton asked what the time frame would be in regard to the stream classifications and triennial review.

Ms. Shannon stated the program anticipated doing three rulemakings in a row. That would mean doing one each year for a period of three years rather than one every three years. So, when a rule would be open, this would allow for incorporation of any waters that had been evaluated at that given point and propose including them in the rule. Then going back to an every-three-year water quality standards revision would allow incorporating those waters that were evaluated at that time.

In answer to Commissioner Minton's question, Ms. Shannon said we are supposed to be in the third year of the three consecutive rulemakings but we are in the first year.

In answer to Commissioner Minton's question of time frame for getting caught up, Ms. Shannon replied that the issues that are being discussed includes both the first phase and the second phase. What goes in the first rulemaking affects what will need to happen next.

Commissioner Minton asked that the commission be informed of the status of the rulemaking process.

### **Dardenne Creek in St. Charles**

Mr. Gerry Boehm reported on Dardenne Creek in St. Charles which included some reasons and support of a rule change concerning the Dardenne Creek. He stated that the growth of the population in Dardenne Watershed threatens the quality of its waters. Data from the Center for Agriculture Resource and Environmental Systems (CARES) in Columbia, Missouri, shows that the tendency for a population in the St. Charles area in the headwaters and also in the area from on the other side of Highway 40 from DD into Warren County is on the increase. Since 1990 data shows an approximate increase in population of 34% and according to CARES it seems like the future is going to be somewhat the same. He stated that MDNR uses growth patterns to determine what is included on the Metropolitan No-Discharge list.

Another concern is future and current public use of the Dardenne Creek requires protections of the waters. This particular area is utilized by several for recreation. The Dardenne Creek flows through the entire Missouri Department of Conservation's August A. Busch Conservation Wildlife Area where there is use for recreation for birding, hiking, and wading. With EPA funding of \$500,000, a study was done on the Dardenne Creek from 1997 to 2000. At present every community in the Dardenne Watershed have been meeting on a monthly basis concerning the idea called the Dardenne Greenway Plan. They have initiated the Corp of Engineers to develop a \$300,000 study. The municipalities have donated \$150,000 in match and Metropolitan Parks, which is now called the Great Rivers Greenway, has provided another \$150,000 in match. So, another \$600,000 will be spent on a study for a stormwater plan and a future plan to develop ways for recreation, for access to the creek, for trails along the creek, for development along the creek and there is concern with the rapid growth. With all of this money and time spent, it would be bad for the creek to be unsuitable for a Whole Body Contact.

The USDS did a volume survey of the creek which showed over a ten-year period the tremendous low quantities of volume. This is another concern. It already has low volume and would not work to put hundreds of thousands of gallons of effluents into this particular stream. Until a TMDL study is done the loading capacity for that particular stream is unknown. The research work done by the Department of Interior and USDA

documents that particular information. The public supports a no-discharge listing for the Dardenne Creek on the Metropolitan No-Discharge list. The worry is about water quality so putting it on the list should not have a tremendous impact but would protect the stream and be an asset to the community rather than a liability. Kansas, Nebraska and Illinois have the antidegradation law so it can't be that difficult to copy it. He mentioned that in south St. Louis, west St. Louis County and Jefferson County a myriad of sewage package plants were put in. Now, they are going back to take them out and put in new systems realizing it was a poor plan. After having covered a number of major points, Mr. Boehm stated that Dardenne Creek was on the no-discharge list at one time. It was taken off in early 1990 and nobody can give a reason for why that happened. New Melle never requested it to be taken off that list. Nobody knows the history.

Commissioner Herrmann asked besides New Melle who else is in this concerned section of Dardenne upstream.

Mr. Boehm said that when you think of the large pieces of property that are being bought up for developing, it's a concern.

Commissioner Herrmann clarified his question by asking what other discharges exist at the present time besides the city of New Melle.

Mr. Boehm stated that New Melle has a place called Fiddlesticks, a development that moved off of Foristell Road, that has a package plant for a small mobile home area. He thought it was serviced by a new subdivision but didn't know if they used that same system or not, but did know of a mobile home park that had actually revised their septic tank not long ago.

Commissioner Herrmann asked others that speak, because of time, to please consolidate and reduce comments as much as possible.

Bernie Rains declined to speak.

Michael O'Connell from Wentzville School District said that the northwest corner of St. Charles County is a fast growing district. They have grown 30% in the last three years from 6,000 students up to 7,800 students. With the two middle schools, one at capacity, the other above capacity, they are trying to build an additional middle school. A large number of the students are located on the east side of the district, which is in the affected area, and where they are looking to build the new middle school. Land was finally located on the assumption that a wastewater treatment plant would get installed in that area. Mr. O'Connell felt that if this was made a no-discharge creek, the treatment plant would not be built, and the new middle school could not be built to accommodate the students that already live in that district.

James Peterson, as a citizen and a landowner, reported that he owns 210 acres where the Dardenne Creek joins little Dardenne, right before it enters into Busch and where it becomes no-discharge. He said they have done a lot of good work to protect the creek. They have taken two acres and planted 200 trees to protect the stream bank. Their kids swim, fish and play in the stream so it is very important that this stream stay as clean as possible. Some of the discharge plants being talked about are dumping millions of gallons of treated wastewater into the creek. Mr. Peterson felt that Dardenne Creek is a high priority because of the development here. He stated the no-discharge designation did not hurt the middle section of the creek because O'Fallon and St. Peters have developed quickly and yet protected the creek. He stated that trucks are already transporting to standard treatment plants and they are not that far. He urged the commission to protect the creek as much as possible.

Kenneth Morgan reported that he is Managing Director of Community Development for the city of O'Fallon and responsible for among other things the water and sewer services within the region where the city of O'Fallon is responsible. He commented that as an agency they are opposed to this designation as presented. He thought it would create an enormous cost increase and expense that would ultimately translate that increase to the citizens. There would be an extreme amount of additional cost necessary to build the infrastructure so that the treatment of sewage could be pumped and pushed to the existing infrastructure. Land has been annexed and will continue to be annexed into the city of O'Fallon in that area. He said it would be very difficult with this designation to provide the effective services necessary. He said the city of O'Fallon has been effective in managing their responsibilities to the community as well as to the State of Missouri in terms of their responsibility to maintain what goes into the streams. Mr. Morgan felt that this designation would thwart their ability to be a good neighbor and a good citizen of the community and as a result cause undo and an enormous amount of financial burden to the citizens they provide services to.

Commissioner Hauser asked Mr. Morgan if he had any idea in terms of percentage what the increase in a sewer bill would be.

To provide effective infrastructure service, Mr. Morgan explained the sizes of pipes and pump stations and how they would need to be placed. Each pump station for the size and capacity needed would cost an average of a few million dollars; the size of minimum 12-20 inch line needed could cost between 80 and almost a couple hundred dollars per liner foot. Or, there is the possibility of a whole new facility in that area which could range between 20 and about 40 million dollars. The prospect of the presentation that it would not thwart growth and that they would be able to provide effective service with our existing infrastructure is a concern. One option that Duckett Creek currently is utilizing is the process of building off-site. Mr. Morgan said there is enough information from Europe, the United States and a number of areas that identify reactor systems work effectively. It is proved everywhere they have studied and samples taken that the water quality of the effluent from these facilities is greater than exists in the most streams that they are placing the effluent into.

Tom Engle, Executive Director of Duckett Creek Sanitary District in St. Charles County, reported the district serves primarily the southern half of the county. They serve almost all of Dardenne Creek that is in the no-discharge area with sewers that go to two main plants on the Missouri River. It has been intimated that all that is necessary is to run lines out to this area, and why have package treatment plants because all you have to do is run lines out there. He stated that is absolutely impossible. Their two plants have been built to the capacity to serve the area currently being served. To serve that area, even if there was capacity, lines running through that area would not be able to accept the effluent; they are just too small. He said it would cost in the 20-30 million dollar range. To put in another plant on the Missouri River and run a line all the way to the Dardenne Creek would also cost between 25 and almost 40 million dollars, depending on how it was done. The other problem is whenever those kinds of commitments are made in terms of money, they are usually bonded and then a bond payment is made every year. With the number of people currently living in that area now, he stated he would not be able to cover the bond cost needed to serve that area with sewers. However, Duckett Creek does realize and understand that St. Charles County is growing. Mr. Engle stated they have done a lot of research and looked at new technology, which is the MBR Technology that was just discussed. He said it is assumed that when discharging into a stream something will be going in that degrades the stream itself. Basic package treatment plants in the State of Missouri were originally licensed under what they call a 30/30 license, 30 parts per million BOD and TSS. The normal background of most streams show that the background on BOD and TSS anywhere between six and ten. So basically, if a package treatment plant is put in, water going in is three times as polluted and that stream will be degraded. He said that's why Duckett Creek has never gone into the package treatment plant business, but what they have done is annexed that whole area and made a commitment that if there is any treatment plant that goes in there it will be a new MBR technology. With the MBR technology they have found BOD and TSS at around three or below. The manufacturers guarantee it five or below. In visiting approximately 20 different MBR plants, the BOD and TSS are so low that they aren't even detectable. Mr. Engle said they are asking to be allowed to discharge into that stream and build three or four small regional plants that would serve that area, allowing for measured development that is allowed either by the City of O'Fallon or the county. He said that Joe Ortwerth, the county executive, has said that he is very opposed to this proposal. Mr. Engle believes that should be left up to the local governments who govern that area. They have made a commitment to protect the water. He said they are against the no-discharge because that would totally stop development.

Commissioner Herrmann asked if the area that's being requested is within Duckett Creek's service area.

Mr. Engle replied that the area that is west, the upper stream, is the annexed area. He explained the area served. There has been a big issue with Perdue Creek in the past because it goes into Lake St. Louis, which is Whole Body Contact. Legislation was passed that said MBRs were not required but said the effluent has to be below 10/15 and be operated by Duckett Creek. They made a commitment to operate only using MBRs, which they feel will let growth happen and protect the environment at the same time.

Lori Farmer from SCI shared their concerns for the water quality along Dardenne Creek but as was just pointed out there may be possible alternative ways of looking at treatment along Dardenne. She had two other concerns. One was making sure sufficient data was reviewed to support this creek being a no-discharge creek. She felt that the Dardenne Creek needs to have more scientific studies conducted before ensuring that it should not have any discharge in it. Scientific studies means that there needs to be reasonable scientific questions asked and that there needs to be reasonable scientific data that is collected so it can be statistically analyzed proving that there is significant degradation of water quality.

Commissioner Herrmann commented that the classification guidelines just presented shows that substantiated data would be needed and not from somebody's wishes and desires.

Ms. Farmer commented that the information presented has been just based solely on population growth and would like to see information presented on that as well before that classification is made.

Mr. Boehm asked to make two comments before continuing. First, it was his understanding that Duckett Creek does not have the area that he was talking about under their jurisdiction. Secondly, there is no mandate that Duckett Creek is going to be doing all the sewage package plants in St. Charles County. Any developer can apply for and receive a permit from DNR and start operating. There is no mandate right now that MBR is going to be used by everybody. He felt this to be a step backwards since it is twice to three times more expensive. He asked what kind of data is needed because he has taken data for 10 years in Dardenne Creek and knows that creek better than anybody in the state with regards to data. The argument he hears often is that 'you don't have enough data.' He felt he would have been able to show the information on population if his PowerPoint presentation would have worked.

Commissioner Minton asked if the area is a zoned area.

Mr. Boehm replied that St. Charles County has zoning.

Commissioner Minton asked if the area Mr. Boehm talked about is zoned.

Mr. Boehm replied yes.

Commissioner Minton asked if the zoning requirements could require any wastewater treatment facility that goes in to be an MBR facility.

Mr. Boehm replied that this was done along the Peruque Creek.

Commissioner Minton asked if this could be done in this particular area.

Mr. Boehm said it could be done.

Commissioner Minton commented that this is the reason the state came up with procedures to determine these factors and didn't want the commission to become a policing agency for zoning. He said that if you don't have the support to zone it then go through the procedure just outlined. This is the procedure the commission hopes to follow in the future to determine what the stream classifications will be. He stated he will not support making a motion to classify a stream because of 'I don't have the data.'

Mr. Boehm then wanted to know what that data would be. He said he would go out and get it if he knew exactly what kind of data that would be.

Commissioner Minton said this is now a procedure to follow for the classification of the streams. It was made public today and is in the minutes. The state and the commission have to have procedures to follow. As a community, right now to prevent any actions taken that you don't want taken, Commissioner Minton recommended to zone it to protect it.

Commissioner Herrmann said there are eight streams listed in the St. Louis area as Metropolitan no-discharge streams. Being able to get the effluent out of the water is the reason they've been Metropolitan No-Discharge streams.

Mr. Boehm didn't understand them as the logic of allowing sewage package plants to come pollute the streams and then list them as a no-discharge because they now have sewers dumped in it.

Mr. Morgan stated that he has had a series of meetings with Missouri DNR and they have identified that it is their policy that they would not allow any agency that is not licensed to treat sewage waste to just build a facility to operate. Currently, O'Fallon, Duckett Creek and that area are the only ones licensed and it has been clearly identified that those are the only agencies that DNR will allow to utilize the services of treating these wastes.

Mr. Boehm expressed concern that the MBR system will be mandated. He felt that the only way to protect these particular streams is to use a no-discharge listing. In speaking with DNR staff, Mr. Boehm was told either the stream would be highly polluted or there was an influx of population and will have a direct impact.

**Staff requests that different interest rates published in the bond buyer be used to calculate the Target Interest Rate for short term SRF borrowing**

Ann Crawford, Acting Section Chief of Water Pollution Control Program's Financial Services Section, reported on interest rates. Ms. Crawford gave a little history on leveraged loan programs. They use what's called a target interest rate to achieve a subsidized interest rate. The target interest rate is a calculation that uses the methodology of 30% of the 25 revenue bonded that's published by the bond buyers index of 20 bonds rounded to 0.1 of 1%. This price is picked off on the Friday before the program does their pricings. A few applicants have been interested in doing some short-term financings. In doing this calculation for a short term, like a one-year note, the interest rate isn't as good as they can get on the market and so we need to subsidize the rate in some way. In looking at the bond buyer and other published rates and looking at the regulations, the regulations allow the commission to allow the staff to make variations as necessary to enhance the program and to make it more efficient. In order for other communities to be able to do a short term debt with the program, if they so desire, and at a subsidized rate, Ms. Crawford requested the commission to allow use of other published rates to use this methodology calculation in determining what their interest rate would be.

Commissioner Easley asked for an example of what kind of rates she was talking about versus what they can get.

Ms. Crawford stated that usually our subsidized rate for a leveraged loan is about 1.8% and that's on a long term 20 year note. The bond buyer has published rates, this ones just taken December 5<sup>th</sup> we would have used to calculate the rate we would have used 5.19% and then we would have taken 30% and we would have done the rounding. That's the 25 revenue bond index. For the one year note it is only 1.18% and so we would use that in our calculation to provide our rate of course its only for one year.

Commissioner Easley asked what the short term rate is under the current method.

Ms. Crawford said there isn't a short term rate right now. A few short term deals with the Metropolitan St. Louis Sewer District have been done. Those were a little bit different in that they had an advanced repayment account and the rate was subsidized in that way using the regular rate. Some communities that are interested in doing short term notes will not have an advanced repayment account. The program would like the ability to use some other published rates.

Commissioner Easley asked what kind of rates are being quoted to them out on the open market.

Ms. Crawford said the bond buyer is what can be used because that's what is in the regulation and a published rate. It gives the one-year note index at 1.18%.

Commissioner Easley didn't think the program should be competing with the non-governmental agencies for these funds unless there is a considerable difference. He explained that that is why he was asking the kind of rates on the open market.

Karl Tyminski, treasurer at the Metropolitan Sewer District, on behalf of general municipalities, said there are three issues at hand. First, there is competitiveness of the rates. For example, the going 20-year rate is out at 520. Thirty percent (30%) of that is somewhere around 150 but when DNR adds its 50 bases point fee that becomes a 2% rate. On the open market with the same credit rating type issue it would be somewhere between a 110 and a 130. So, that would be a 70 bases point spread, for example, a 50, 70, 100 million dollar loan comes out to be \$700,000, \$800,000 to the municipality. The second thing is an equity issue just on the development of the interest rates themselves. When using a 20-year interest rate, if looking at the construct on that interest rate, the base portion of that interest rate is what inflation is going to be over those 20 years and then there is the real rate of return involved as well. So, because you have a premium built in for inflation for repayment so on and so forth over the 20 years, when looking at a one year borrowing it is paid right away. The inflation expectations are much different, much more predictable over a short term than with a long term so the lower interest rate. It corresponds to that level of risk associated with that borrowing. The third thing is an also a risk factor. When a municipality would borrow that money and if the rate is 2%, they will be more aggressive in an investment string within state laws than they would be if it were a lower rate benchmarked against the one year. Mr. Tyminski felt there are the three issues that supports the rationale for lowering to an index that better matches what target borrowed against.

In answer to Commissioner Herrmann's question, Ms. Crawford replied they are looking for an approval.

Commissioner Hauser moved **to adopt recommendation of staff**; seconded by Commissioner Easley, and unanimously passed.

**Staff requests that the effective date of the Intended Use Plan be changed.**

Ms. Crawford reported on the Intended Use Plan explaining that the usual way is to have a hearing in January or early February, then approval of the Intended Use Plan in March. This has caused some problems with in trying to time our pools. Staff has proposed to have the same hearing date and the same approval date by the commission but have the effective date of July 1. An advantage of this would be to get it done before some of the communities drop off the fundable list. Also, more would be known about what the appropriations are and would have some bigger pools. So, for the fiscal year 2004 and forward, the actual effective date would be July 1<sup>st</sup> that corresponds to the state fiscal year.

Ms. Crawford said June 30 would work better.

Commissioner Minton **moved to adopt recommendation of staff**; seconded by Commissioner Easley, and unanimously passed.

**Request to increase funding for the Branson West phosphorus grant project.**

Ann Crawford – I kind of misworded that it actually ought to be Request for increase funding and approval to put on the fundable list for Branson West because they are right now on the contingency list of the infrastructure grants. This would use up the rest of the infrastructure grant money. We funded 10 communities with the 5.2 million dollars federal money that was given to use from the federal government and we also matched that with the 25% match to effectively we gave 80% grants to all of those 10 communities. We are now down to the deadline, Branson West applied originally with the original round and got their variance and everything to use that 55% grant to run the state money through. We have had quiet a few recoveries and we have kind of group our money. We have had some interest earnings and we would like to go ahead and fund this project with the state money instead of federal money. We have \$338,000,063 of federal money left, we would like to increase our state match to about 52.56% which is still within our regulatory guidelines so that we would provide Branson West with a 70% match less than everybody else got but still a \$1,368,161. Its about \$199,000 short of what Branson West had hoped to get in grant money but the city thinks that they can come up with that difference and have a project to go. We feel like this is a good thing to do because Branson West has the largest flow of anyone who is left that hasn't gotten funded in the phosphorus grants. Also it's a regional facility and they did get their application in on the first round of requests so we are requesting that they be moved to the fundable list and that we give them a total grant amount of \$1,368,161. I believe there may be some representatives from the city if you have questions of their project.

Commissioner Easley asked if there were other cities on the contingency list.

Ms. Crawford said there would be the next time there is an Intended Use Plan.

Commissioner Easley asked if funds would be available for them.

Ms. Crawford replied that all funds are used up.

Commissioner Herrmann asked if there were three that didn't accept the funds.

Ms. Crawford replied that several did not apply - Clever, Crain, Reeds Springs – from the Table Rock Watershed.

Commissioner Hauser **moved to adopt recommendation of staff**; seconded by Commissioner Easley, and unanimously passed.

### **Enforcement Referrals – Lake Region Water and Sewer Company**

Kevin Mohammadi, Chief of the Water Pollution Control Program's Enforcement Section reported that he has already received some complaints from the Urban Area Coalition. At the January 2003 Clean Water Commission meeting staff presented the matter of Lake Region Water and Sewer Company for referral to the Office of Attorney General. The Commission directed staff to make additional attempts to work an agreement with the company. The department has reached an agreement in principal with the company that the state, Attorney General, and Lake Region will be executing in the form of a court order. Therefore, in order for the Attorney General's Office to file a petition in court and obtain a court order, staff recommends the matter to be referred to the Attorney General's Office.

David Shorr from Lathrop and Gage reported that he represents Lake Region. Mr. Shorr agreed that they have reached a general consensus. He wanted to convey, on behalf of his client, that his client still has concerns regarding the process and method. He expressed that DNR and the Attorney General's Office have worked well with them so he would ask that the matter be referred and it come to a conclusion.

Commissioner Hauser **moved to refer this item to the Attorney General's Office**, seconded by Commissioner Minton, and unanimously passed.

### **Urban Areas Coalition**

Tom Jones, wastewater utilities director for the City of Jefferson, reported on the Urban Areas Coalition. He explained that they are a group of wastewater and stormwater utilities in the State of Missouri that have come together for the following purposes: To educate the public, regulators, Missouri Clean Water Commission, Legislators about operation and maintenance of wastewater and stormwater utilities. To promote informed discussion of issues effecting wastewater and stormwater utilities and the environment. To promote the use of sound science in evaluating issues that effect the wastewater and stormwater utilities and the environment and to share information among our members concerning current, draft and proposed legislation, regulations, and policies effecting the wastewater and stormwater utilities. Members include: the City of Columbia, the City of Springfield, Metropolitan St. Louis Sewer District, the City of Independence, the City of Macon, the City of Joplin, the City of Kansas City, the City of Moberly, the City of St. Joseph, the City of Jefferson and the Little Blue Valley Sewer District. They are different from some utility companies in the state in that they are government owned; therefore, the owners are the citizens of the communities served. They are an enterprise fund utility and their source of income is from the wastewater fees paid by users. Collective the UAC represents a population in excess of 2.7 million Missourians, which is over 48% of the state's population. They have a great regard for the environment. They are front line environmental professionals. Millions of gallons of wastewater are treated everyday and returned to local streams and rivers. Protection of human health in

the environment is a serious responsibility and they strive to do that everyday of the year. The UAC is responsible for the most significant expenditure of money within the State of Missouri and is specifically targeted at improving water quality. They are faced with the challenge of properly operating the utilities while being fiscally responsible to rate payers. The UAC represents wastewater and stormwater utilities that are responsible for hundreds of millions of dollars in capital investments in plants and infrastructure. Therefore, they have an interest in making sure that legislation and regulations provide an appropriate benefit to the environment and to the rate payers. To accomplish their goals, the UAC would like to partner with the Commission and the Department of Natural Resources in drafting and revising regulations into a policy that supports clean water goals. Representatives of the Coalition will be attending future Commission meetings and will assist the Commission in anyway the Commission wishes. Susan Meyers at St. Louis MSD is the designated point of contact and with the handouts it will indicate where she can be reached. They requested that the Clean Water Commission and the Department of Natural Resources include the Urban Areas Coalition in future assessment and development of regulations and policies effecting wastewater and stormwater utilities. The Coalition believes it can provide useful input into areas the department is currently working on such as use attainability analysis, methodology, stream classification and stream use designation. They have quarterly meetings and invited DNR and the commission to attend.

Mr. Hull responded that he felt good about the formation of the group and the invitation to work with them. He thought the group would be a good contact to get input from municipalities on both wastewater and drinking water issues. Discharges from drinking water facilities to the Missouri River is still to be addressed. He stated he was looking forward to working with a number of cities at one time through one organization and if at all possible would attend the January 9 meeting.

Commissioner Herrmann stated he was looking forward to their cooperation and guidance.

### **Other**

Lucy Thompson from the department's Environmental Assistance Program, stated she was presenting for Jim Penfold, and wanted to discuss the Missouri Environmental Management Partnership. A presentation concerning the new Missouri Environmental Management Partnership (MEMP) was given to the commission about a year ago. It is set up to show and support Environmental Management Systems in different industries, organizations throughout the state. Two companies, Missouri Water in St. Joseph and Dura Automotive in Brookfield, have come forward to start as partners in the organization. Dura Automotive is applying for a certified partner. There four levels of partnerships are Partner, Certified Partner, Advanced Partner and Certified Advanced Partner. Certified Partner is a company or organization that is certified through an outside agency. A Partner and Advanced Partner do not have the outside certifications. The Advance Partner and the Certified Advance Partner are required to do additional

above and beyond the law type requirements, go further than what a normal environmental management system would be required to do. The Dura Automotive information handed out is basically comments, information on the Missouri Environmental Management Partnership, and in addition, some general summaries on the two groups that are applying for partnership. This information and presentation is being provided to the different commissions that would be impacted by the different companies. Dura Automotive, located in Brookfield, submitted their application in April 2003. Their application outlines their permits and talks about what they are doing on their Environmental Management System, their impacts, how they are going above and beyond the legal requirements, etc. After receipt, their application is reviewed and verified with other involved programs to insure there are no major problems with the permits or requirements that they are required for. What has been requested through the MEMP program has been basically recognition. Missouri Water, located in St. Joseph, submitted their application in May of 2003. Their basic incentives requested is recognition. Ms. Thompson outlined the permits that Missouri Water has and the plans they have. She said this Commission is being asked to react to the general appropriateness of admitting Dura and Missouri American as members of MEMP. She apologized for the short notice but said they just received it back from the different groups that needed to review it. They are hoping to use the different commissions as the external stakeholders to review the information and inform them of the general appropriateness of admitting them to the MEMP.

Mr. Hull stated that Mr. Penfold did speak to him about this particular presentation. They wanted to have it before the joint commission meeting but did not think there was time on the agenda. Mr. Hull had suggested that Ms. Thompson speak at the individual commissions meetings instead.

Ms. Thompson asked if anyone had any questions she could answer.

In answer to Commissioner Minton's question, Ms. Thompson said she needed the commissions general reaction to bringing them into the program and would like to have a decision by the end of the month.

Commissioner Herrmann thought they could communicate with Jim and get that information to Ms. Thompson.

Commission Hauser said in regard to the presentation on RBCA, he thought it offered tremendous potential and wanted to propose a resolution. He thought something similar had happened in Hazardous Waste. He moved that the Clean Water Commission request DNR staff to perform a comprehensive analysis of the process of promulgating and implementing a RBCA rule, including options to assist the commission in deciding whether both commission should promulgate the rule. The analysis should also address the process for handling appeals, revising the rules and whether a general umbrella rule is appropriate. And if possible he would like to see the analysis at the next commission meeting.

When Commissioner Herrmann asked, Mr. Hull thought it was a process they needed to move toward. In regard to a question about which commission, under present law, would promulgate that rule. Right now it looks like it would be the Clean Water Commission.

Commissioner Herrmann thought the Hazardous Waste Commission **was** going to make a similar motion in their meeting.

Commissioner Hauser **moved that the Clean Water Commission request DNR staff to perform a comprehensive analysis of the process of promulgating and implementing a RBCA rule, including options to assist the commission in deciding whether both commissions should promulgate the rule. The analysis should also address the process for handling appeals, revising the rules and whether a general umbrella rule is appropriate. And if possible, report on the analysis at the next commission meeting.** I think this offers tremendous potential and would like to see us move forward with it. Commissioner Easley seconded the motion; and unanimously passed.

Commissioner Minton asked if at the next commission meeting a short briefing could be given on the timeframe with the promulgation rule of 401 and with the methodology of 303(d) rulemaking procedure. Commissioner Minton referred to a meeting last fall where they were responding to citizen input over the fact that the commission was inaccessible and just some of the problems with the perceived functions of the commissions. Another item addressed was an overhaul of the whole rulemaking procedure and protocol. He was told that it was a very good presentation by Jeff and kept the rest of the commission informed. Just as a reflection in the records, the commission is moving towards trying to address some of the concerns of the citizens over the function of commissions.

In answer to Commissioner Herrmann's question, Ms. King said the next meeting date is January 28.

Commissioner Minton informed the group that the hearing for St. Johns Bayou has been extended and starts January 20.

Scott Totten, Director of the Water Protection & Soil Conservation Division, stated he would give an update at the January 28 meeting on the Interim Committee on Water Quality. A report should be completed by the end of December.

There being no further business to come before the commission, Commissioner Herrmann moved to adjourn the December 11, 2003, meeting.

Respectfully submitted,

Jim Hull  
Director of Staff